

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **15.02.2016**

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.4328 of 2016
and
W.M.P.No.3678 of 2016

Boomathi

... Petitioner

Vs.

1. The District Collector,
Tiruppur District,
Tiruppur.

2. The Revenue Divisional Officer,
Udumalpet,
Tiruppur District.

3. The Tahsildar,
Madathukulam Taluk,
Madathukulam,
Tiruppur District.

4. The Executive Officer,
Sankaramanallur Village Panchayat,
Madathukulam Taluk,
Tiruppur District.

5. The Assistant Divisional Engineer,
State Highways Department,
Madathukulam,
Madathukulam Taluk,
Tiruppur District.

6. Ramasamy.

7. Muthulakshmi

8. Karuppuchamy

9.Selvarani

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the Respondents 1 to 5 from permitting the Respondents 6 to 9 to carry the pipeline to carry water from the common well in S.F.Nos.155/1B, 154, 155/2C, 155/2E, 155/1F and 155/1D in Sankaramanallur North Village, Madathukulam Taluk, Tiruppur District, through the property belonging to highways and through burial ground.

For Petitioner	:	Mr.S.R.Sundaram for M/s.J.Karthik
For Respondents 1 to 5	:	Mr.V.Jayaprakash Narayanan Spl.Government Pleader
For Respondents 6 to 9	:	No Appearance

ORDER

The petitioner has come forward with this Writ Petition seeking for a Writ of Mandamus forbearing the respondents 1 to 5 from permitting the respondents 6 to 9 to carry the pipeline to carry water from the common well situate in S.F.Nos.155/1B, 154, 155/2C, 155/2E, 155/1F and 155/1D in Sankaramanallur North Village, Madathukulam Taluk, Tiruppur District through the property

belonging to High Ways Department and through burial ground.

2. It is the case of the petitioner that the properties comprised in R.S.Nos.155/1B, 154, 155/2C, 155/2E, 155/1F and 155/1D totally measuring 9 acres and 28 cents in Sankaramanallur North Village, Madathukulam Taluk, Tiruppur District originally belonged to his father, who acquired the same through a registered Partition Deed dated 24.7.2000. Subsequently, the petitioner's father executed a registered Gift Settlement Deed regarding the above said property dated 08.07.2004 and since then, the petitioner has been in exclusive possession and enjoyment of the said property and all the revenue records stand in petitioner's name.

3. Apart from that, the petitioner's father also settled certain other properties in favour of his elder sister who is the 7th respondent herein and the eastern side of the property was settled in petitioner's name. In the property settled in the name of petitioner's sister, there exist a common well which was the only source of irrigation for all the properties which originally belonged to petitioner's father. Accordingly, water can be drawn from the said well only for irrigation of the above said property belonging to petitioner and 7th respondent herein and the petitioner has been

drawing water for irrigation of his properties from the common well by the pipeline for the past 20 years . The petitioner and the 7th respondent are equally sharing the water for four days each alternatively.

4. Whiles, the respondents 6 to 9, with an ulterior motive, tried to lay new pipeline and illegally draw water from the common well and carry it to far off place in order to irrigate certain other properties belonging to them which was no way connected with the properties for which the common well water can be utilised. As the respondents 6 to 9 have no right to divert the water from the common well to be utilised for other properties except the properties for which it was commonly dug, the petitioner has filed a suit in O.S.No.323 of 2015 before the District Munsif Court, Udumalpet and the same is pending till date. Thereafter the respondents 6 to 9 sunk three wells near the common well and thereby tried to diminish the water of the common well, as a result of which, the water in the common well has started to diminish and deplete. Therefore the petitioner filed another suit in O.S.No.422 of 2015 before the District Munsif Court, Udumalpet restraining the respondents from carrying the water from the newly sunk well to other properties situate at far off places.

5. Further the respondents 6 to 9 are attempting to lay pipelines through a road belonging to High Ways Department and also through a burial ground by obtaining permission from the respondents 1 to 5 and the respondents 1 to 5 herein, who are revenue officials, without granting any opportunity of hearing to the petitioner, are attempting to grant permission to the respondents 6 to 9 for carrying pipeline to the above said properties. Hence the petitioner gave repeated objections to the respondents 1 to 5 in-person and through post on several dates on 1.9.2015, 2.12.2015 requesting them not to grant permission for the respondents 6 to 9 to lay pipelines and carry the water as described above. Finally, on 1.2.2016, the petitioner gave a representation to the respondents 1 to 5 through registered post. But without considering the same, the respondents 1 to 5 are taking steps to grant permission permitting the respondents 6 to 9 to lay the pipeline through the public road and burial ground which would create problem to the villagers. Hence the petitioner has filed the present writ petition.

6. I have heard the submissions made on either and side and perused the materials available on record.

7. Learned Special Government Pleader appearing for R1 to R5 opposed to grant direction as prayed for stating that already a civil suit in O.S.No.422 of 2015 is pending before the District Munsif Court, Udumalpet between the petitioner and the respondents and therefore, the petitioner has to work out his remedy before the Civil Court.

8. However, the learned counsel appearing for the petitioner would submit that pending suit, the respondents are trying to grant permission to the respondents 6 to 9 to lay the pipeline through the public road and the burial ground. He would further submit that it would suffice if the 2nd respondent is directed to consider the objections/representations of the petitioner and dispose of the same within a time frame that may be fixed by this Court.

9. Though very many contentions have been raised in this Writ petition, at the time of making submissions, learned counsel for the petitioner sought for a direction to consider and dispose of the objections/representation made by the petitioner. Hence, this Court, without going in to the merits of the case, directs the 2nd respondent to consider the objections/representations made by the petitioner, dated 1.9.2015 and 2.12.2015 by affording an opportunity of

personal hearing to the petitioner as well as to the respondents 6 to 9 and pass appropriate orders on merits and in accordance with law within a period of **six weeks** from the date of receipt of a copy of this order.

10. It is made clear that this Court has not expressed any opinion with regard to the merits of the objections made by the petitioner and it is for the 2nd respondent to consider and dispose of the objections/representations of the petitioner purely on merits.

11. The Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

15.02.2016

msr

Index: Yes/No

R. SUBBIAH, J.

msr

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